



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2015-0529; EPA-R05-OAR-2022-0685; FRL-10638-01-R5]

**Air Plan Approval; Wisconsin; Emissions Reporting and
Infrastructure SIP Requirements**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Wisconsin state implementation plan (SIP) revising air emissions reporting requirements codified in Chapter 438 of the Wisconsin Administrative Code. Additionally, EPA is proposing to approve a related infrastructure requirement under section 110 of the Clean Air Act (CAA) for the 2012 fine particulate matter (PM_{2.5}) and 2015 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2015-0529 or EPA-R05-OAR-2022-0685 at <https://www.regulations.gov>, or via email to arra.sarah@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments

cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Olivia Davidson, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0266, davidson.olivia@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever

"we," "us," or "our" is used, we mean EPA.

I. What is the background of this SIP submission?

The Wisconsin Department of Natural Resources (WDNR) submitted a SIP revision on July 13, 2015, addressing infrastructure SIP requirements for the 2012 PM_{2.5} NAAQS. EPA proposed approval of most elements of the submission on February 19, 2016 (81 FR 8460). The public comment period for our proposed rulemaking closed on March 21, 2016. EPA received two adverse comment letters.

One commenter stated that "Compounding the issue of insufficient monitoring is the fact that the WDNR does not require industrial facilities to provide and report their annual PM_{2.5} emissions like they do for PM and PM₁₀. Each facility is in the best position to know their actual emissions from the previous year, so not requiring a report at the end of the year makes it even more difficult to identify any violations. The information needed to make that assessment would need to be sought out independently for each facility in the entire state, which requires a great deal more work than reading a report and comparing it to the limit." EPA agreed that 110(a)(2)(F) was not satisfied in the proposed rule.

Once the final approval of most elements and deferred action of element F was published, WDNR began the rule making process to update NR 400.03, 438, and 484.06(4) Wis. Adm. Code and establish PM_{2.5} reporting requirements that satisfy the Federal Air Emissions Reporting Requirements (AERR) rule. WDNR

held a public comment period on the revised rules from September 27, 2021, through November 5, 2021, and held a public hearing on October 29, 2021. Several adverse comments were received on the additional costs that would be incurred by sources to report annual emissions from units, operations and activities with *de minimus* emissions that are not required to be reported for permitting, and concerns with the specificity of the record-keeping requirements. As discussed further below, WDNR broadened language on record-keeping requirements and included exemptions for *de minimus* reporting requirements in the final rule submitted to EPA in response to comments received.

WDNR made submissions on July 13, 2015, August 8, 2016, and November 26, 2018, to address infrastructure SIP requirements for the 2012 PM_{2.5} NAAQS¹ and EPA finalized approval of most elements for the 2012 PM_{2.5} NAAQS on December 27, 2016 (81 FR 95043). Further, EPA proposed approval of most elements for the 2015 ozone NAAQS on September 30, 2020 (85 FR 61673). EPA did not take action on Wisconsin's satisfaction of the infrastructure requirements of CAA section 110(a)(2)(F) for the 2012 PM_{2.5} or 2015 ozone NAAQS. This action addresses section 110(a)(2)(F), also referred to as "element F", which pertains to stationary source monitoring and reporting requirements for the 2012 PM_{2.5} and 2015 ozone NAAQS. Approving this element would lead to full approval of Wisconsin's 2012 PM_{2.5} NAAQS

¹ The 2016 submission addressed Prevention of Significant Deterioration (PSD) of section 110(a)(2)(C), 110(a)(2)(D), and 110(a)(2)(J), and was approved on February 7, 2017 (82 FR 9515). The 2018 submission addressed section 110(a)(2)(D)(i)(I) Prong's 1 and 2 Transport requirements and was approved on October 4, 2019 (84 FR 53061).

infrastructure SIP.

A. Revisions to Emission Reporting Requirements.

On August 3, 2022, WDNR submitted to EPA Board Order AM-31-19 (Rule AM-31-19), effective in the Wisconsin Administrative Register on August 1, 2022. The submission addresses the identified reporting requirement deficiencies in NR 438 Wis. Adm. Code and updates administrative language in NR 400.03 and 484.06(4) Wis. Adm. Code.

To satisfy the AERR rule, major sources in nonattainment areas and sources with the potential to emit equal to or greater than 100 tons per year (tpy) of criteria air pollutants² or ammonia are required to report annual emissions, and sources with actual emissions of equal to or greater than 0.5 tpy of lead are required to report annual emissions of all criteria air pollutants and ammonia regardless of the magnitude of emissions. The revision of NR 438 ensures compliance with the AERR rule. More specifically, the revision adds the requirement that any source directly emitting PM_{2.5} report annual emissions, and the reported particulate emissions (including PM₁₀ and PM_{2.5}) must distinguish between filterable and condensable particulate matter³, and include fugitive emissions.⁴ While these reporting

²The six criteria pollutants are carbon monoxide, ground-level ozone, lead, nitrogen dioxide, particulate matter, and sulfur dioxide.

³Filterable particulate matter are particles that are directly emitted by a source as a solid or liquid at stack or release conditions and captured on the filter of a stack test train, while condensable particulate matter are emissions that are vapor phase at stack conditions, but which condense and/or react upon cooling and dilution in the ambient air to form solid or liquid PM after discharging from the stack. Direct (or primary) particulate matter is the sum of the filterable and condensable particulate matter emissions.

⁴See NR 438.04(5) in the docket of this rulemaking.

requirement thresholds, established based off the AERR rule⁵, are determined by the potential to emit, the revised rule 438 adds the annual reporting requirement of 5 tpy of actual emissions of primary PM_{2.5}, adding to the existing actual emission reporting requirements for PM₁₀, Carbon Monoxide, Lead, Ammonia, Nitrogen Oxides, Sulfur Dioxide, and Volatile Organic Carbons.

To address the comments received regarding emission reporting exemptions, NR 438.03(1)(am)3-4 have been created to list emission units, operations, or activities that have *de minimus* emissions and are therefore not required to be reported in the annual emissions inventory report. Further, NR 438.03(4) was revised based on comments received to broaden the required recordkeeping documents from specifically stated safety data sheets, technical data sheets, and lab testing results to records that include information on the composition and quantity of raw materials and waste, including continuous emissions monitoring data and audits, and results of stack or performance tests.

Updates to NR 400.03 and 484.06(4) were included to align with Federal emissions reporting terminology and the updated emissions inventory process. The update to NR 400.03 incorporates an acronym definition used in the revision of NR 438, while the update to NR 484.06 corrected citations amended in NR 438 to reflect EPA's updated emissions factor database.

B. Section 110(a)(2)(F) - Stationary source monitoring

⁵ See 40 CFR 51, subpart A, and 40 CFR 51.122.

system.

Section 110(a)(2)(F) contains several requirements, each of which are described below.

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

WDNR requires regulated sources to submit various reports, dependent on applicable requirements and the type of permit issued, to the Bureau of Air Management Compliance Team. Basic authority for Wisconsin's Federally mandated Compliance Assurance Monitoring reporting structure is provided in *Wis. Stats.* 285.65. NR 438 and NR 439 set forth the minimum emissions reporting requirements that must be reported to EPA annually, and monitoring and testing requirements, respectively, for applicable facilities. Considering the proposed revisions to NR 438, EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(F) with

respect to the 2012 PM_{2.5} and 2015 ozone NAAQS.

II. What action is EPA taking?

EPA is proposing to approve WDNR's request to incorporate by reference the revisions to NR 400.03, 484.06(4), and 438 contained in Rule AM-31-19 into Wisconsin's SIP in order to update the emission reporting requirements. Further, EPA is proposing to approve 110(a)(2)(F) of Wisconsin's infrastructure SIP submission, required under the 2012 PM_{2.5} and 2015 ozone NAAQS, based on the updated rule submission. Approving this element would lead to full approval of Wisconsin's 2012 PM_{2.5} infrastructure SIP.

III. Incorporation by Reference.

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference revisions to Wisconsin Administrative Code rules NR 400.03, NR 438, and NR 484.06(4) Table 4D Row (a), as published in the Wisconsin Register July 2022 No. 799, effective August 1, 2022, discussed in section I of this preamble. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a

SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 9, 2023.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2023-05281 Filed: 3/22/2023 8:45 am; Publication Date: 3/23/2023]